



Sales Tax Newsletter

News and developments

A publication of the Sales and Special Taxes Division

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Tax Commissioner

TAX CHANGES EFFECTIVE OCTOBER 1, 2005

As noted by the July 2005 *Sales Tax Newsletter*, and the *Special Edition*, legislation was approved by the 2003 and 2005 North Dakota Legislative Assemblies that provide the following changes to the sales and use tax law:

Calculation of Tax

In place of a bracket system for computing the amount of sales tax due on a taxable transaction, the sale tax is computed by multiplying the taxable sales price by the

applicable tax rate in effect. If the tax calculation results in a fraction of a cent, the tax calculation should be carried to the third decimal place and rounded to the nearest whole cent. If the third decimal place is four or less, round down, and if the third decimal place is greater than four, round up. This change is effective October 1, 2005.

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No City or County Caps

Retailers will no longer apply the city or county cap when calculating the city or county sales tax on sales occurring on or after October 1, 2005. In place of the cap, the customer may apply for a refund of the local tax from the State Tax Commissioner for the difference between the amount of the city and county sales and use tax paid, and the amount that would have been due previously by the application of the cap. Refunds forms are available by contacting the Sales &

Withholding Tax Section at (701) 328-3470, e-mailing us at salestax@state.nd.us, or visiting our web site at www.ndtaxdepartment.gov.

Freight, Delivery and Other Transportation Charges

Effective October 1, 2005, all freight, delivery and other transportation charges are considered to be part of the selling price. If the sale is taxable, the freight, delivery and other transportation charges that are part of the sale and billed by the seller are always taxable. This includes other transportation charges identified as “shipping and handling” charges or fuel surcharges. If the product being delivered is exempt from sales tax, then the freight, delivery, and other transportation charges are also exempt.



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Delivery charges billed directly to the customer by a third party delivery service that are not making the sale of tangible personal property remain exempt from sales and use tax.

Food and Food Ingredients

Effective October 1, 2005, “food and food ingredients” that are exempt from sales tax will also include items such as coffee, coffee substitutes, tea, cocoa or cocoa products, powdered drink mixes, and water, including water sold in containers less than one gallon.

Food and food ingredients does not include alcoholic beverages, dietary supplements, soft drinks, tobacco products, candy, or prepared food. These items remain subject to sales tax.

Soft drinks

Soft drinks remain subject to sales tax, and include nonalcoholic beverages that contain natural or artificial sweeteners, pop and fruit drinks or fruit punches that are less than fifty percent (50%) juice by volume. Products that are not regarded as soft drinks are those containing milk or milk products, soy, rice, or similar milk substitutes, or that contain greater than fifty percent (50%) vegetable or fruit juice by volume.


Candy

Candy continues to be subject to sales tax and means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour or any item requiring refrigeration.

Prepared Food

Prepared foods continue to be subject to sales tax. Prepared food includes food sold in a heated state or heated by the seller, or food that is prepared by mixing or combining two or more food ingredients for sale as a single item, or food sold with eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws provided by the seller. Food sold in an unheated state by weight or volume as a single item is taxable only if sold with eating utensils. Generally businesses that sell prepared food include restaurants, convenience stores, delicatessens, concession stands, coffee shops, and caterers.

Lease or Rental

The lease or rental of tangible personal property remains subject to sales tax based on the periodic payments as they are made. Effective, October 1, 2005, the first payment of a lease or rental will be taxable in all instances where the customer takes possession of the lease or rental property in North Dakota. 

BORDER WORKSHOPS

The North Dakota Office of State Tax Commissioner is participating with Minnesota and South Dakota to present joint sales and use tax workshops. The workshops will include similarities and differences in the states’ sales and use tax laws. The workshops are free, but be sure to register in advance to verify there is room available.

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North Dakota/Minnesota Sales Tax Issue Workshop

Tuesday, 10/25/05 8:30 am – noon

Skills and Technology Center

1309 19th Ave North

Fargo, ND

To register call the Minnesota Department of Revenue at 651-297-4213 or call our office at 701-328-3475.

North Dakota/South Dakota Sales Tax Issue Workshop


Thursday, 10/27/05 9:00 am - 12:00 pm Sales Tax

1:00 pm - 3:00 pm Contractors Tax

West Acres Community Room

West Acres Shopping Center

Fargo, ND

To register for this workshop on-line, go to www.state.sd.us/revenue, or call the South Dakota Department of Revenue at 800-829-9188, or call our office at 701-328-3475. 

DESTINATION-BASED SOURCING RULES

North Dakota has always been a destination-based sourcing state for sales and use tax purposes. What this means is the state and local sales tax rate that will apply on a sale is based on where the customer takes delivery of the purchased item.

For example:

1. The seller will collect the sales tax rate in effect at the seller's place of business for over-the-counter sales transactions.
2. If the item is shipped or delivered to the purchaser by the seller, the seller collects the sales tax rate in effect at the location where the purchaser receives the item. If the shipping address is not known to the seller, the sales tax rate that applies is based on the purchaser's address that is maintained by the seller. If the seller does not have the purchaser's address, the seller would then use the address of the purchaser as identified on the purchaser's payment instrument.

The state and local tax rate that will apply on a sale is based on where the customer takes delivery of the purchased item.

Receipt by Shipping Company on Behalf of Customer

Effective October 1, 2005, the receipt of items by a shipping company on behalf of a customer is not considered to be received by the customer. In those instances where a shipping company receives an item from a seller, the seller would collect the sales tax rate in effect based on the shipping address. If the seller does not have the shipping address, the sale should then be sourced to the address of the customer shown on the seller's business records.


Repair Services

The sale of itemized repair parts that results from repairs completed on customer's items or equipment, is taxed based on where the location where the customer takes possession of the customer's items or equipment. If parts and labor are not itemized, the sales tax is generally based where the service is performed.

Subsequent lease or rental payments are subject to sales tax based on where the equipment is actually located, as provided by the customer.

INTERNET SALES

If both the Internet seller making an Internet sale of a taxable item and the customer are located in North Dakota, the seller has a responsibility to apply the applicable state and local sales taxes on the sale, including shipping and handling charges.

If a customer located in North Dakota purchases a taxable items from an out-of-state seller that is delivered to a location in this state, the customer has the responsibility for the reporting and payment of use tax. The form to report this use tax is the Use Tax Return, which is available at www.ndtaxdepartment.gov or by contacting our office at salestax@state.nd.us. 

STREAMLINING THE SALES AND USE TAX RETURN

We are currently reviewing the sales and use tax return for possible changes that will reduce the amount of information that you are required to file with the Office of State Tax Commissioner. In addition to the reduction of required information, it is anticipated this change will reduce the change for unintended errors and thereby increase the efficiency for both the taxpayer and the state.

Additional information will be forthcoming as these changes are identified. 

TAXPAYER ASSISTANCE

If you have questions regarding sales tax or about correspondence received from our office, the following information will be helpful in ensuring that your call or visit to our office is completed in a speedy and efficient manner:

- If you have general sales tax questions, please call our Sales Tax Compliance Section at (701) 328-3470.
- If calling our office about correspondence you have received, please call the number that is listed on the correspondence, and have a copy of the correspondence available when you call.
- When calling our office, please note the name of the person assisting with your question in the event you will have any follow-up questions later.
- Instead of calling or visiting our office, you may also e-mail us at **salestax@state.nd.us**.



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